IN THE

# Supreme Court of the United States

OCTOBER TERM, 1940

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No. 137

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FRANK WOLF,
Petitioner and Appellant below,
vs.
B. C. SCHRAM, Receiver of First National Bank, Detroit,
Respondent and Appellee below

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# PETITION OF FRANK WOLF FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

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*To: The Honorable Charles Evans Hughes, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:*

Your petitioner respectfully shows:

## I.

## SUMMARY STATEMENT OF MATTERS INVOLVED

I. Petitioner was the owner in 1933, of certain shares of Detroit Bankers Company.

II. The Honorable United States Circuit Court of Appeals for the Sixth Circuit held in 1936, that the owners of Detroit Bankers Company shares, were liable to assessment as the actual owners of the shares of First National Bank-Detroit.

See—*Barbour v. Thomas,* 86 F. (2) 510.

III. Receiver Schram brought suit against petitioner on January 21st, 1938, to collect this assessment liability from him.

IV. Petitioner and Appellant claimed in the Lower Court that the Receiver had sufficient assets in his hands (without collecting any assessment liability from Petitioner) with which to pay all depositors one hundred cents on the dollar—and that, therefore,

(a) The Receivers suit was, of necessity, one to collect interest on the deposits of the closed bank.

(b) And, that as such, it was a suit for damages for the detention of the depositors' money.

See—*Ticonic National Bank v. Sprague,* 303 U. S. 406, 410.

(c) And so, under the Statute of Limitations of Michigan, was barred three years after July 31, 1933.

V. And Petitioner asked leave of the District Court, to make the Comptroller of the Currency a party defendant in the Receiver's suit against him—so that he could show that the Receiver was merely collecting interest on deposits (over 100 per cent of the principal) and thus damages for detention of the depositors' money—

which suit for damages was barred by the Michigan Limitation Statutes, as he claimed.

And Petitioner and Appellant sought to have said Comptroller of the Currency made a party in the Michigan District Court—for that purpose—on the authority of—

*O'Connor v. Comptroller,* 81 Fed. (2) 833 (5 C. C. A.), Cert. denied 298 U. S. 657.
*First Nat. Bank v. Williams,* 252 U. S. 504.

in order that Petitioner might bring himself within the rule of *Crawford v. Gamble,* 57 Fed. (2) 15, 17 (6 C. C. A.), where it was said:

> "If it should be true as alleged that the note was executed to secure the New Bank against loss on account of assets received from the Old Bank, but that such assets actually equal in value the amount at which they were turned over, and that therefore no necessity exists for an assessment to pay the note, then upon these facts being brought home to the proper authorities appellant may doubtless be granted appropriate relief."

VI. The Lower District Court, on December 5, 1938, denied Petitioner's said Motion to make the Comptroller a party—without stating reasons for his denial.

(Record on Appeal, page 36.)

VII. Upon the entry of judgment for the Receiver, Petitioner and Appellant appealed generally from the judgment entered against him in the District Court.

See his Notice of Appeal—Record on Appeal, page 75.

VIII. But the Circuit Court of Appeals for the Sixth Circuit entered judgment on March 14, 1940, affirming the Lower Court's judgment—without any opinion on the merits—by an order as follows:

"Before Hicks, Allen and Arant.

This case came on for hearing upon the record, briefs and arguments of counsel, and it appearing that it arises out of the same state of facts as *Barbour v. Thomas,* 86 F. (2d) 510, a class suit decided by this Court; and it appearing that a motion that the Comptroller of the Currency of the United States be made a party to this suit was denied and no appeal taken therefrom;

It is ordered and adjudged that the order and judgment of the District Court be affirmed.

Approved for entry:

H. W. Arant
United States Circuit Judge

Filed: March 14, 1940."

IX. And your Petitioner and Appellant most respectfully submits to this Honorable Supreme Court—

that such a disposition of his Appeal is unjustified, and one which no litigant in any United States Court, however humble, should be compelled to accept—as a proper determination of their rights on appeal.

## REASONS RELIED ON FOR ALLOWANCE OF WRIT

I. The decision of the Circuit Court of Appeals declining to pass upon petitioner's appeal upon the merits is erroneous—for the reason that an order denying the motion to add the Comptroller as an additional party defendant, is not appealable.

*City of New York v. Gas Co.*, 253 U. S. 219.
*Oneida Nav. Co. v. Job and Co.*, 252 U. S. 521.
*Van Cott v. DeVries, Inc.*, 37 F. (2d) 48 (2 C. C. A.).
*Central, etc., Co. v. Dunkley Co.*, 282 Fed. 406 (9 C. C. A.).

II. The decision of the Circuit Court of Appeals is erroneous—for the reason that a general notice of appeal from final judgment, brings up for review all orders and proceedings shown by the record on appeal.

See—
*New Rules of Civil Procedure*, Rule 75.
*Century, etc., Association v. Wickersham*, 75 F. (2) 812 (5 C. C. A.).

And see—

*Camp v. Mortgage Company*, 205 Calif. 380.
*Malooly v. York Heating Company*, 270 Mich. 240.
*Mandelker v. Goldsmith*, 177 Wis. 245.

III. The decision of the Circuit Court of Appeals is erroneous—because it denied your petitioner the right to plead and avail himself of the Michigan Statute of Limitations, which this Honorable Supreme Court regards as "a meritorious defense."

See—

*Guaranty Trust Co. v. United States,* 304 U. S. 126.

IV. The decision of the Circuit Court of Appeals is erroneous—because it denied petitioner a fair determination of the questions raised by his appeal, upon a mere technicality, which is contrary to the uniform policy and practice of this Honorable Supreme Court.

V. The decision of the Circuit Court of Appeals is erroneous—because

(a) Appellee Receiver was advised on January 9, 1939 (R. 76) that Petitioner and Appellant was making the order of December 5, 1938, (denying his motion to add the Comptroller as a party) a part of the record on appeal for review by the Court of Appeals—

See Designation of Record on Appeal, items 8 and 11. Record 76.

(b) Appellee Receiver made no objection to the inclusion on appeal of this order—and had such objection been made then—your Petitioner and Appellant had 90 days from December 5, 1938 (the denial of the motion to add the Comptroller) within which to take a separate appeal therefrom.

(c) Appellee Receiver should, therefore, be held to have waived any objection that your Petitioner and Appellant did not take a separate appeal from this order of December 5, 1938.

(d) No harm was done the Receiver by the failure to take a separate appeal, therefore, your petitioner should not be deprived of any of his rights.

*Merrill v. Nat. Bank,* 173 U. S. 131.

Wherefore, your petitioner prays that a Writ of Certiorari issue under the seal of this Court, directed to the Circuit Court of Appeals, Sixth Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of said Court had in the case numbered and entitled on its Docket,

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Appellee

to the end that this cause may be reviewed and determined by this Court as provided by the Statutes of the United States; and that the decree therein of said Circuit Court of Appeals be reversed by this Court and for such other and further relief as this Court may deem proper.

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